

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1540 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KIRITSINH C PARMAR

Versus

DIRECTOR OF AGRICULTRE

Appearance:

MR IS SUPEHIA for Petitioner
MR DA BAMBHANIA for Respondent No. 1
Mr.Dave, LAGP for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 24/06/97

ORAL JUDGEMENT

Rule. Mr.Dave, LAGP waives service of Rule for the respondents.

2. In response to the notice issued earlier on behalf of the respondents, affidavit in reply has been filed by Mr.V.K.Makwana, Administrative Officer, Office of the Director of Agriculture, setting out reasons why the case of the petitioner was not considered for compassionate appointment. The only reason for so doing is that as per the calculation appended to the said affidavit in reply at page 28, the income exceeds Rs.1,500/-. The actual income as per the record is Rs.1,147/-. This being below the sum of Rs.1,500/-, the question arises is as to why the authorities are taking a stand that the income exceeds the said limit. From the aforesaid, it is clear that the authorities are not disputing as to the eligibility of the petitioner to get appointment on compassionate ground. This eligibility is falling short of said requirement of income. In coming to this conclusion, the authorities have relied on the provision interpreted by them in the relevant GR to the effect that the amount which the family has received on account of the death of the original employee of the Government under various retirement benefits has to be computed and 12% interest thereon has to be considered and added to the income. Accordingly, sum of Rs.1097 is added to the said actual income of Rs.1147/- and that is how the total income of the family is considered to be Rs,2,244/-. Death of bread-earner of any family is preceded by a lot many expenses and sudden stoppage of that regular income would also lead to many difficulties including financial hardship. To presume that whatever amount that the surviving members of the deceased has received is invested and the family members are earning interest at the rate of 12% per annum is totally baseless. The G.R. concerned is actually a confidential letter issued by the General Administration Department No.Recruitment/1087/B/s-7-K dated 16-2-1991. The letter is clearly to the effect that the income earned by way of interest from death-cum-retirement, gratuity, GPF, group insurance and other insurance, dividend income from shares and income derived from movable and immovable properties are to be taken into consideration.

2. Of necessity from the aforesaid 5 sources of income of interest, last two items would result into an income provided any investment is made in share and any income is derived from immovable or movable properties.

3. If this is the position with regard to two of the aforesaid items, the remaining 3 also to be understood in that light and when the word used is "earned", it would necessarily mean what is actually earned. Therefore, hypothetical calculation of interest earned cannot be

taken into consideration. If that was the purpose, then the word employed would have been "interest that could have been earned" or "deemed to have been earned". In absence of any such clear cut position especially when the letter is issued in furtherance of the policy of compassionate appointment, while interpreting the same, it has to be done in a manner to further the scheme and not to thwart the same.

4. Similar question had arisen before this Court in Spl.C.A.No.7173 of 1993 decided on 21-7-1994. The said decision is reported in 1995(2) GLR 194. For the aforesaid reason and the discussion contained in the said reported decision, I have no hesitation in allowing this petition. The petition is allowed. The respondents are directed that ignoring the aforesaid income of interest, the authority shall proceed to consider the application of the petitioner for compassionate appointment and the income thus being less than Rs.1,500/-, the application shall be processed on that basis and at the end of it, necessary order for appointment shall be passed. Rule is made absolute accordingly.
